STATE OF CONNECTICUT

Docket No.: MMX-CV18-5010661-S	**: Superior Court**
	:
Gloria Drummer,	**:**
	:
Plaintiff, Individually and on behalf	**:**
of all persons similarly situated,	**: Judicial District of**
	: Middlesex
v.	**: at Middletown**
	:
State of Connecticut, *et al.*,	**:**
	:
Defendants.	**: June 29, 2018**

AMENDED MEMORANDUM IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

Gloria Drummer moves the Court for class certification pursuant to Connecticut General Statutes § 51-105 and Practice Book Sections 9-7 and 9-8(2). In support of her motion she states as follows:

Factual Context

Gloria Drummer is a 60 year-old woman who was involuntarily civilly committed to Connecticut Valley Hospital, Whiting Forensic Division, on October 14, 2016. She was declared discharge ready on August 2, 2017. At her annual review judicial hearing held by Judge Joseph D. Marino, Probate Judge, on October 13, 2017, the case was continued. The evidence was uncontradicted that she did not meet commitment standards. There was no appropriate place for her discharge. The result was

discriminatory, unconstitutional and illegal segregation and unnecessary institutionalization.

1. Standing

"The issue of ascertainable loss or standing, must be addressed, before a court may consider the other criteria for class certification." *Neighborhood Builders, Inc., v. Town of Madison*, 294 Conn. 651, 663 (2010). Ms. Drummer has been aggrieved and has suffered injury to her person because she was denied a periodic review as soon as she had stabilized and was no longer a danger to self or others or gravely disabled. Her treatment team declared her ready for discharge on August 2, 2017. Moreover, Ms. Drummer was unnecessarily institutionalized for six months, from September 2, 2017 until March 14, 2018. Ms. Drummer was discharged on March 14, 2018 to Lotus House, a residential services group home with full-time staff.

The defendant filed a motion to dismiss for mootness but not for lack of standing. The defendant's failure to challenge standing should be considered an admission that Ms. Drummer had standing at the time she filed her case.

Ms. Drummer's claims are not moot because of her long history of psychiatric conditions and psychiatric treatment. At age nine, Ms.

Drummer was removed from the care of her mother and placed in foster care until the age of 11. From age 12 to 14, Ms. Drummer had her first psychiatric inpatient treatment in Riverview Hospital, now Solnit Center, the state psychiatric hospital for children under age eighteen. Ms. Drummer has received inpatient hospital treatment at Cedarcrest Hospital, Norwich State Hospital and Connecticut Valley Hospital. Ms. Drummer was treated at Connecticut Valley Hospital from 1988 to 2013. She received residential services and outpatient treatment at Capitol Region Mental Health Center from 2013 to 2015. She again received inpatient treatment at Connecticut Valley Hospital from November 11, 2015 until March 14, 2018.

Ms. Drummer has standing to assert her claims regarding constitutional and civil rights to a timely periodic review and timely discharge to the most integrated setting because these claims are capable of repetition yet evading review. *Olmstead v. L.C.*, 527 U.S. 581, 594, footnote 6 (1999). In the *Olmstead* case, the plaintiffs, L.C. and E.W, were women with mental health conditions and a history of treatment in institutional settings. Both women were voluntary patients at the Georgia Regional Hospital at Atlanta, had stabilized, were discharge-ready but remained in the state hospital due to a lack of appropriate community supports and services. *Olmstead v. L.C.*, 527 U.S. at 593. L.C. filed a

lawsuit claiming violations of the ADA's community integration mandate while she was still an inpatient. E.W. intervened in that suit. After the suit was filed, the state discharged both women to the community. Commissioner Olmstead claimed that the case was moot. The United States District Court and the Court of Appeals held that the case was not moot. The United States Supreme Court affirmed that ruling and ruled on the merits of the case that the State had violated the community integration mandate by segregating and unnecessarily institutionalizing L.C. and E.W. The Supreme Court stated in footnote 6,

> L.C. and E.W. are currently receiving treatment in community-based programs. Nevertheless, the case is not moot. As the District Court and the Court of Appeals explained, in view of the multiple institutional placements L.C. and E.W. have experienced, the controversy they brought to court is "capable of repetition, yet evading review." *Olmstead v. L.C.*, 527 U.S. 581, 594, footnote 6 (1999).

2. Class Certification

Ms. Drummer brings this action on her own behalf and on behalf of two classes defined as follows:

Periodic Review Class (Fasulo Class)

All psychiatric inpatients involuntarily civilly committed to a state-operated psychiatric facility who are likely to not meet commitment

standards before their annual or biennial review, and who have not had a probate court periodic review requested by the facility.

Community Integration to Most Integrated Setting Class (Olmstead Class)

All psychiatric inpatients involuntarily civilly committed to a state-operated psychiatric facility, who have been declared discharge ready by their treatment teams or not meeting commitment standards by the probate court, but who remain in the facility unnecessarily institutionalized and segregated for an unreasonable period of time because of a lack of appropriate placements, supports and services in the community.

A. History of Class Action Certification Against State Psychiatric Hospitals

For over forty-five years, courts have approved class certification in cases involving state psychiatric hospitals. One of the earliest was in 1970, when Bruce Ennis filed a class action against the State of Alabama and Bryce Hospital in *Wyatt v. Stickney*, 325 F. Supp. 781 (M.D. Ala. 1971). Moreover, there is a long history of class action cases being certified regarding involuntary civil commitment procedures, especially for patients committed to state psychiatric hospitals. See, *Lessard v. Schmidt*, 349 F. Supp. 1078 (E.D. Wis. 1972). In Connecticut, the cases of *Doe v. Hogan*,

Case No. H88-239 (D. Conn. 1988), *Roe v. Hogan*, Case No. H89-570 (D. Conn. 1989) and *Williams et al., v. Plaut*, Case No. H78-111 (D. Conn. 1980) were certified as class actions. *Doe v. Hogan* was certified by Judge Burns for all psychiatric inpatients in the state whom were denied their constitutional right to access to the courts. The Connecticut Legal Rights Project was created as the remedy in that consent decree in 1989.

B. *Doe v. Hogan Consent Decree*

The *Doe v. Hogan* consent decree, filed on October 24, 1989, attached as exhibit A, authorized CLRP to represent patients at all DMHAS, [at the time, DMH] inpatient facilities. "[T]he Program must provide assistance to patients of Department inpatient facilities regarding their admission, treatment, environmental conditions, discharge, and other hospital-related rights under state or federal law or policy." Consent Decree, paragraph 18.

The United States District Court for the District of Connecticut certified class action classes in *State of Connecticut Office of Protection and Advocacy for Persons with Disabilities, et al., v. State of Connecticut*, et al., 706 F.Supp.2d 266 (D. Conn. 2010). The class involved people with mental illness in three nursing homes who were denied discharge planning and state residential services and supports in a more integrated setting.

There have been many class certifications of people with mental illness in state psychiatric hospitals. A few of them includes *Kenneth R. ex rel. Tri-County CAP, Inc. v. Hassan*, 293 F.R.D. 254 (D. N.H. 2013); *Thorpe, et al., v. District of Columbia*, 303 F.R.D. 120 (D. D.C. 2014); *N.B. et al., v Hamos*, 26 F.Supp.3d 756 (N.D. Ill. 2014); and see, *Frederick L., et al., v. Department of Public Welfare*, 422 F.3d 151 (3d Cir. 2005).

Gloria Drummer's Motion for Class Certification seeks injunctive and declaratory relief for violations of the Patients' Bill of Rights, which incorporates the constitutional rights of liberty, due process and the civil right timely to be discharged from a state institution to the most integrated setting appropriate, and with a presumption that the most integrated setting is supportive housing. Ms. Drummer's injuries flow from systemic policies of the State of Connecticut which deprive the proposed classes of their rights to liberty, to a judicial due process periodic review of their commitment, and timely to be discharged to the most integrated setting.

These violations can be addressed by a single court order for each class for declaratory and injunctive relief. Only class-wide relief will remedy these long-standing state-wide structural and statutory problems. These violations of law cannot be remedied by individual lawsuits. Only systemic state-wide relief for both the Fasulo Class and the Olmstead Class will

ensure that people with psychiatric disabilities will get a judicial due process hearing in probate court as soon as their present mental status indicates that they no longer meet commitment criteria, and that they will be discharged to the most integrated setting within a reasonable period of time.

An indication of the appropriateness of class action and systemic relief for people with mental health conditions in psychiatric facilities is the priority of Olmstead litigation by the United States Department of Justice, Civil Rights Division, Disability Rights Section and Special Litigation Section. An overview of the nation-wide Olmstead litigation by the Department of Justice is available at https://www.ada.gov/olmstead/olmstead_enforcement.htm.

It is well-established that "[c]ivil rights cases against parties charged with unlawful, class-based discrimination are prime examples" of appropriate class actions under Rule 23. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 361 (2011). This is particularly true where a public entity has a policy or practice that causes unnecessary segregation of people with disabilities in violation of the integration mandate of the Americans with Disabilities Act, 42 U.S.C. § 12132, 28 C.F.R. § 35.130(d); the Rehabilitation Act, 29 U.S.C. § 794, 28 C.F.R. § 41.51(d); the Supreme

Court's opinion in *Olmstead v. L.C.*, 527 U.S. 581 (1999); and ultimately the Connecticut Patients' Bill of Rights, Conn. Gen. Stat. § 17a-541, which incorporates all of these civil rights and provides a private right of action against the State, DMHAS and the named facilities.

C. History of the Periodic Review/*Fasulo* Class Action

On July 2, 2010, Judge Joseph Marino, Middletown Probate District, ordered a civil patient held in Whiting Forensic Division to be discharged after an intake at a local mental health authority or no later than July 16, 2010, because there was a less restrictive setting available and he did not meet commitment standards. The patient had filed for periodic review pursuant to Conn. Gen. Stat. § 17a-510. The hospital did not release the patient as ordered and instead filed for a stay and for a probate appeal. The civil patient filed for a writ of habeas corpus which was granted by Judge Holzberg in case no. CV10-4012237S on August 10, 2010.

After this case, the Attorney General's Office ordered changes to procedures for periodic review at CVH, including adding a waiver provision to the Notice of Annual Review form, CVH-160. Once CLRP discovered that CVH patients were being presented with a document with an option to waive their annual reviews, counsel wrote a letter to the Attorney General's Office objecting to the waiver and asserting the constitutional right to a

periodic review requested by the state as soon as each patient's present mental status indicates that they may not meet commitment standards. (Lowry Letter to AAG Salton, January 19, 2011, attached as Exhibit B.) Counsel never received a response from the Attorney General's Office. However, CVH changed the CVH-160 form, eliminating the waiver of annual review and changed CVH Policy and Procedure 9.5, Legal Status. (Vartelas Letter of February 10, 2012 with attachments, attached as Exhibit C.) Connecticut Valley Hospital continued to refuse to request periodic reviews in probate court for patients whose present mental status stabilized and likely did not meet commitment standards prior to their annual or biennial reviews as required by *Fasulo*. CLRP continued to advocate with DMHAS leadership, CVH leadership, Probate Court Administration and the Middletown Probate Court from 2012 to 2018. Only the Probate Court of Middletown has attempted to provide constitutionally required periodic reviews as required by *Fasulo*. Since the statute remains unconstitutional and none of the class is getting periodic reviews requested by the state hospitals, Ms. Drummer and the Periodic Review/Fasulo Class bring this action to declare Conn. Gen. Stat. § 17a-498(g) unconstitutional and for a single common injunction ordering periodic reviews as required by the Connecticut Constitution and *Fasulo v. Arafeh*.

3. Practice Book § 9-7 Requirements – Class Action Certification

"A trial court must undertake a rigorous analysis to determine whether the plaintiffs have borne the burden of demonstrating that the class certification requirements of Practice Book §§ 9-7 and 9-8 have been met . . . A trial court nonetheless has broad discretion in determining whether a suit should proceed as a class action." (Internal quotation marks omitted.) *Neighborhood Builders, Inc., v. Town of Madison*, 294 Conn 651, 656-67 (2010), quoting *Artie's Auto Body, Inc., v. Hartford Fire Ins. Co.*, 287 Conn. 208, 212-13 (2008). "In determining whether to certify the class, a trial court is bound to take the substantive allegations of the complaint as true. That does not mean, however, that a court is limited to the pleadings when determining whether the requirements for class certification have been met . . . In determining the propriety of a class action, however, the question is not whether the plaintiff or plaintiffs have stated a cause of action or will prevail on the merits . . . but rather whether the requirements of the class action rules are met . . . *Although no party has a right to proceed via the class action mechanism . . . doubts regarding the propriety of class certification should be resolved in favor of certification.*" *Town of New Hartford v. Connecticut Resources Recovery Authority*, 291 Conn 433, 471 (2009). Finally, the courts of appeal are to give greater deference to a trial

court's decision to certify a class than to its decision declining to do so. *Macomber v. Travelers Property & Casualty Corp.*, 277 Conn. 617, 628 (2006).

A. Numerosity

The plaintiff classes are so numerous that joinder is impracticable. Inpatient units in state-operated facilities usually hold 15-20 patients at any given time. Connecticut Valley Hospital has eleven general psychiatry inpatient units. Greater Bridgeport Community Mental Health Center has three inpatient units. Connecticut Mental Health Center in New Haven has two inpatient units. Whiting Forensic Hospital has civil patients integrated into its five inpatient units. Capitol Region Mental Health Center has one inpatient unit. In 2017, at Connecticut Valley Hospital alone, there were 84 new civil commitments filed, 107 annual reviews, and 48 periodic reviews.

"While there is no predetermined number of plaintiffs necessary to certify a class, courts generally have found a class consisting of 40 or more members to be sufficient." *State of Connecticut Office of Protection and Advocacy for Persons with Disabilities, et al., v. State of Connecticut*, *et al.*, 706 F.Supp.2d 266, 287 (D. Conn. 2010). While the number of committed patients at each of the facilities is not known, it is most likely to be far in excess of 40 patients.

1. Numerosity – Fasulo Class

For the Fasulo Class, the number of patients at each facility are the civil patients who are committed pursuant to C.G.S. § 17a-498(c), whose condition has stabilized to the point they likely no longer meet commitment standards and should have had a periodic review requested by the facility but did not get one. In 2017, DMHAS published the DMHAS Psychiatric Services Study Report. (Attached as Exhibit D.) The report was required by Section 356 of Public Act 15-5 of the June Special Session. Table 3 on page 20 shows the number of admissions for each inpatient psychiatric facility from 2011 to 2016.

a. Census of Each State Psychiatric Facility as of 2016

Connecticut Valley Hospital – 318

Whiting Forensic Hospital – 232

Greater Bridgeport Community Mental Health Center – 62

Connecticut Mental Health Center – 20

Capitol Region Mental Health Center – 16

b. Admissions by Facility from FY 2011 to FY 2016

Facility	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
CVH	111	122	129	137	135	131
CVH Forensic (Now WFH)	246	234	247	260	260	262
GBCMHC	108	101	80	100	94	94
CMHC	91	78	74	51	58	47
CRMHC	37	28	24	25	30	20
Total	593	563	554	573	577	554

c. Discharges by Facility from FY 2011 to FY 2016

Facility	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
CVH	122	120	148	147	142	139
WFH	251	226	228	249	257	260
GBCMHC	104	99	80	101	82	95
CMHC	88	78	75	53	55	47
CRMHC	37	27	25	24	30	20
Total	602	561	556	574	566	561

The final chart necessary to determine the probable number in the Periodic Review/Fasulo Class is Table 9 on page 31 of the DMHAS Psychiatric Services Study Report. That table indicates the length of stay in the state inpatient psychiatric hospital by range of days. The table covers calendar years 2012 to 2015 and all state inpatient psychiatric facilities.

d. Length of Stay at All State Psychiatric Facilities

Period of Days	1 to 90 Days	91 to 180 Days	180 to 365 Days	More than 365 Days	Total %
2012	44%	22%	17%	17%	100 %
2013	37%	18%	30%	16%	100 %
2014	30%	25%	24%	21%	100%
2015	27%	27%	35%	11%	100%

This table clearly demonstrates the numerosity of the Fasulo Class. The Fasulo Class comprises civilly committed patients who stabilize prior to a year but did not get a periodic review until their annual review or possibly even their bi-annual review. The complaint asserts that the vast majority of patients stabilize prior to a year of commitment. Complaint, paragraph 29. This chart from DMHAS shows that approximately 80 per cent to 90 per cent of the patients in state psychiatric hospitals have a length of stay

shorter than one year. The state hospitals have refused to request periodic reviews for patients who are stable and likely not to meet commitment standards based on their present mental status. Therefore, whether one takes 80 per cent of the census or 80 per cent of the new admissions, the numbers are in the hundreds and far in excess of the requirements for numerosity. According to *Fasulo*, every patient discharged prior to two years should have a judicial due process periodic review of their present mental status and commitment based on their present mental status, not some arbitrary and excessively long review date. None of the state facilities are requesting periodic reviews.

2. Numerosity – Olmstead Class

The Periodic Review/Fasulo Class feeds into the Community Integration/Olmstead Class. *Fasulo v. Arafeh* recognizes the substantive due process liberty interest in the Connecticut state constitution to liberty based on present mental status and the procedural due process right to a full judicial due process hearing to determine whether each patient's present mental status meets commitment standards. Once the person's present mental status indicates the person is no longer committable or only gravely disabled for a lack of community supports and services, the community must have capacity to ensure that the patient is discharged

within a reasonable period of time. Those persons, like plaintiff Drummer, whose discharge was delayed due to a lack of appropriate community supports and services, are those who make up the Olmstead Class.

The State of Connecticut and DMHAS have long acknowledged this discharge delay or "gridlock." In 2000, *The Report of the Governor's Blue Ribbon Commission on Mental Health* (hereinafter *Blue Ribbon Commission*) stated, "Similarly, insufficient community services for adults result in increased demand for acute care, (e.g., hospitalization) as clients with unresolved clinical needs continue to deteriorate. Patients already in hospitals, who could be discharged to less restrictive settings, have nowhere to go, resulting in system "gridlock."" *Blue Ribbon Commission*, Report Summary, page x. (*Blue Ribbon Commission Report* attached as exhibit E.) The lack of a comprehensive mental health system with adequate capacity for timely discharge from psychiatric inpatient facilities also contributes to people with mental health conditions being arrested, jailed and incarcerated or discharged to homelessness.

In Chapter V of the *Blue Ribbon Commission* report of 2000 the Commission identified a summary of priority recommendations. The very first issue was identified as, "Inadequate or unavailable community and residential services for children and adults with serious mental illness have

resulted in unnecessarily lengthy inpatient stays." *Blue Ribbon Commission*, Chapter V, page 52. The recommendation was, "Immediate steps must be taken to ensure timely access to acute inpatient care for children and adults by developing a continuum of services without compromising the availability and quality of inpatient care." *Blue Ribbon Commission*, Chapter V, page 52.

Seventeen years after the *Governor's Blue Ribbon Commission Report on Mental Health* and eighteen years after *Olmstead v. L.C.*, 527 U.S. 581 (1999), DMHAS, in its *DMHAS Psychiatric Services Study Report*, attached as Exhibit D, stated that, "DMHAS has close to 900 residential beds, but the capacity does not meet the need for discharge resources." *DMHAS Psychiatric Services Study Report*, page 45. One of DMHAS's recommendations includes, "Relieve the gridlock in state inpatient facilities by increasing the availability of high intensity residential programs. These programs would accommodate individuals currently in state hospitals who could be placed in community settings with the appropriate level of treatment, supervision, and support." *DMHAS Psychiatric Services Study Report*, page 48.

At Connecticut Valley Hospital alone there were approximately 107 annual reviews in 2017, probably the best indicator of the number of

committed civil patients in the hospital at any one time. Current law requires an annual review of every patient who has been committed and has resided in a state psychiatric facility for one year. Conn. Gen. Stat. § 17a-498(g).

The number of persons in the Olmstead Class should be driven by the number of people from the Fasulo class. Right now, no state psychiatric hospital is complying with *Fasulo* and ensuring that patients receive a judicial due process hearing to determine whether their present mental status indicates that the person continues to meet commitment standards or not. Right now, the process remains almost completely a clinical decision. Patients often complain that staff tell them, "You need to be compliant because we have you for a year." The clinical discharge path is conservative, risk-averse, and often driven by what is available or not available in the community. There are long waiting lists for most community services. Clinicians and treatment teams often don't determine and chart discharge readiness until a community placement is available. The Connecticut Supreme Court warned against allowing physicians to determine such an important constitutional liberty interest:

> Since the state's power to confine is measured by a legal standard, the expiration of the state's power can only be determined in a judicial proceeding which tests the patient's present mental status against the legal

> standard for confinement. That adjudication cannot be made by medical personnel unguided by the procedural safeguards which cushion the individual from an overzealous exercise of state power when the individual is first threatened with the deprivation of his liberty.
> *Fasulo v. Arafeh*, 173 Conn. 473, 479 (1977)

From Table 4 of the *DMHAS Psychiatric Services Study Report*, page 20, we know that from 2011 to 2016 the total discharges from state-operated psychiatric inpatient facilities fluctuated from 602 in 2011 to 561 in 2016. None of these discharges were given *Fasulo* hearings. It is clearly highly likely, if not almost certain, that at least 60 of these discharges were delayed, resulting in unnecessary institutionalization and segregation in violation of the ADA and Connecticut Patients' Bill of Rights Conn. Gen. Stat. § 17a-541 and § 17a-542, due to the lack of a comprehensive mental health system with adequate capacity to ensure that all discharges were done within a reasonable time, thirty to sixty days, of the time that they should have been declared discharge ready through the process of a *Fasulo* hearing.

Therefore, both the Fasulo Class and the Olmstead Class meet and probably far exceed the numerosity requirement for each and every one of the state inpatient psychiatric facilities.

B. Commonality

Practice Book Section 9-7(2) requires that in order for a single person to sue on behalf of a class there must be questions of law and fact common to the proposed classes. The Supreme Court has stated that the threshold requirement of commonality is not high. *Collins v. Anthem Health Plans, Inc.*, 275 Conn. 309, 324 (2005)(*Collins I*). "This requirement is easily satisfied because there need only be one question common to the class." *Id*. at 323. The commonality standard in Connecticut Supreme Court cases applies to this case, not the United States Supreme Court case of *Wal-Mart Stores, Inc., v. Dukes*, 564 U.S. 338 (2011). Judge Miller, Judicial District of Hartford, in *Dougan v. Sikorsky Airline Corp.*, 2016 WL 921779, Case No. X03CV126033069 (2016) held that Connecticut has not adopted the *Wal-Mart* case and therefore the appropriate standards are from *Collins I*. *Dougan v. Sikorsky Airline Corp.,* at page 3.

There are common questions of law and fact common to both the Fasulo Class and Olmstead Class.

1. Fasulo Class Common Questions of Law and Fact

a. Is Conn. Gen. Stat. § 17a-498(g) unconstitutional?

b. Does the Connecticut constitution and *Fasulo v. Arafeh* require state psychiatric facilities to request a probate court hearing as soon as their patient is stabilized and likely not to meet the legal commitment standard?

c. Were Ms. Drummer and all Fasulo Class members denied their constitutional due process probate court hearing to determine whether their present mental status met the legal standard for commitment?

The answer to each of these questions is yes. These issues of law and fact are common to all class members. "In short, commonality is satisfied where the question of law linking the class members is substantially related to the resolution of the litigation, even though individuals are not identically situated." *Marr v. WMX Technologies, Inc.*, 244 Conn. 676, 682 (1998). "Each common issue however must be one the resolution of which will advance the litigation. The commonality requirement is satisfied as long as the members of the class have allegedly been affected by a general policy of the defendant, and the general policy is the focus of the litigation." *Collins v. Anthem Health Plans, Inc.*, 275 Conn. 309, 324 (2005)(*Collins II*).

The answer to each of these questions will advance the litigation. All class members are affected by the general policies of the state hospitals in determining whether a person meets the legal standard for commitment and were given a due process probate court commitment review hearing. A single declaratory order and order of permanent injunction ordering timely Fasulo periodic reviews will remedy the constitutional violations by the state. Therefore, the Fasulo class meets the commonality requirement.

2. Olmstead Class Common Questions of Law and Fact

a. Does the Connecticut Patients' Bill of Rights incorporate the federal civil right from the Americans with Disabilities Act, the Rehabilitation Act and *Olmstead v. L.C.*, 527 U.S. 581 (1999) to receive services in the community in the most integrated setting?

b. Does the Connecticut mental health community services and supports system have adequate capacity to ensure that all patients who no longer meet commitment standards are discharged to the most integrated setting within a reasonable time?

c. Does the Connecticut Patients' Bill of Rights, integration mandate and the Commissioner's Policy on Community Integration require

that state inpatient psychiatric facilities presume that supportive housing is the most integrated setting?

d. Are the Olmstead class members being discharged to the most integrated setting within a reasonable time after their Fasulo hearing determines that the person no longer meets commitment standards?

The answers to all of these questions advance the litigation. These questions all involve systemic issues calculating the discharges from the state hospitals, the need for each level of care upon discharge, and the development of capacity at each level and type of community supports and services. DMHAS's own publications admit that there has been gridlock both in and out of the state hospitals for at least seventeen years. This gridlock results in discrimination, segregation, and unnecessary institutionalization of people with mental health conditions who have a constitutional and civil right to live in the community in the most integrated setting. The court's orders for community integration will resolve the litigation and create a mental health system that no longer discriminates and segregates people with mental health conditions.

Finally, the claims of Ms. Drummer are common to all of the named defendants and the proposed class because pursuant to Conn. Gen. Stat.

§ 17a-511, involuntarily civilly committed patients may be, and regularly are, transferred between one another by a superintendent's transfer. These transfers are involuntary and demonstrate how each of the defendant facilities have common issues of law and fact and even common patients through the transfers.

C. Typicality

Ms. Drummer's claims are typical of the claims of the plaintiff proposed classes:

A. The named plaintiff and the members of the proposed classes are all civilly committed to a state-operated inpatient psychiatric facility;

B. The facility did not request a periodic review by a probate court;

C. The members of the proposed plaintiff classes are or will be discharge ready or not meet commitment standards;

D. The members of the proposed plaintiff classes will be unnecessarily institutionalized and segregated because of the failure of the state to have an Integration Plan for psychiatric inpatients;

E. The state has failed to measure and respond to the need for residential services and supports in the community resulting in continued confinement of patients who are ready for discharge or do not meet commitment standards and the failure of the state to discharge them within a reasonable time to the most integrated setting.

Ms. Drummer as the class representative has claims typical of the proposed classes.

D. Adequate Representation

Ms. Drummer, the named plaintiff, will fairly and adequately protect the interests of the proposed plaintiff classes. Ms. Drummer has been in and out of inpatient psychiatric facilities in Connecticut her entire life, starting as a child and continuing into her adult life. She has been in numerous facilities as both a forensic and civil patient. The nature of her mental health condition and her history of treatment demonstrates a substantial likelihood that she will need inpatient psychiatric care in the future. She has suffered injury-in-fact in the past and has a substantial interest in improving the mental health system in the future due to her continued treatment in the community and likely need for inpatient psychiatric treatment.

Plaintiff's counsel are experienced litigators and have the resources to adequately represent the interests of the proposed plaintiff classes. Counsel are attorneys with the Connecticut Legal Rights Project (CLRP), the legal services organization created by federal consent decree to represent patients at all state-operated inpatient psychiatric facilities. Counsel have spent many years developing the class claims in this case regarding the constitutional and civil rights provided in the Connecticut Patients' Bill of Rights, including the right to liberty when patients do not meet commitment standards, the right to periodic review of commitment, and the right to discharge to the most integrated setting with adequate supports and services in the community. CLRP will devote the attorney time and expenses necessary to prosecute the case. Counsel have not previously represented a certified class.

4. Practice Book § 9-8(2) – Injunctive Relief Class

Plaintiff's claims satisfy the requirements of Practice Book § 9-8(2) in that the defendants have acted on grounds generally applicable to the proposed plaintiff classes, thereby making appropriate final injunctive and declaratory relief with respect to the proposed classes as a whole. The State of Connecticut has failed to implement recommendations of its own commissions and reports to build sufficient capacity in the community

mental health system to unlock the gridlock throughout the system and ensure that the civil rights of involuntarily institutionalized patients to receive timely community services and supports in the most integrated setting. The failures of the state to act are systemic and statewide, affecting all persons involuntarily committed to state psychiatric hospitals.

Conclusion

Wherefore, plaintiff requests that two classes be certified and that matter proceed as a class action.

s/Kirk W. Lowry
Kirk W. Lowry, Juris No. 429577
Legal Director
Kathleen M. Flaherty, Juris No. 413221
Executive Director
Sally Zanger, Juris No. 069554
Karyl Lee Hall, Juris No. 405577
Senior Staff Attorneys
Virginia Teixeira, Juris No. 433079
Staff Attorney
Connecticut Legal Rights Project
Beers Hall 2nd Floor
P.O. Box 351 Silver Street
Middletown, CT 06457
(860) 262-5017
Fax (860) 262-5035
klowry@clrp.org

Certification

I hereby certify that all the parties have consented to accept papers served electronically and that a copy of the foregoing was sent via electronic mail on June 29, 2018 to:

Walter Menjivar
Walter.menjivar@ct.gov

Jacqueline Hoell
Jacqueline.hoell@ct.gov

s/Kirk W. Lowry
Kirk W. Lowry